mercial necessity for the issue of the bonds—they would not be marketable without it—and as very severe statutory penalties were threatened if the bonds were issued without the certificate, the court very properly held that there was sufficient duress to prevent the payment from being "voluntary" in such sense that the so-called "estoppel" theory would apply. As the court points out, all acts done under duress are voluntary in the sense that the party under duress chooses the lesser of two evils. "The fact that a choice was made according to interest does not exclude duress."

CONTRACTS—MISTAKE INDUCED BY FRAUD—RETENTION OF BENEFITS.—The plaintiff orally agreed to adjust the loss under an insurance contract for $335. When reducing the oral agreement to writing the defendant's agent, taking advantage of plaintiff's illiteracy, fraudulently induced the plaintiff to sign an agreement to accept $250 in full payment. In answer to the plaintiff's action on the oral agreement, the defendant set up the written agreement and performance thereunder. *Held,* that the signed writing did not constitute a contract, and that plaintiff could recover the balance due without returning what he had received. Grace, J., *dissenting. Mathias v. State Farmer's Mutual Ins. Co.* (1918, N. D.) 168 N. W. 664.

A document signed under these circumstances has frequently been held to be wholly inoperative, not even conferring upon its fraudulent holder the power of creating rights in a *bona fide* purchaser for value. *Foster v. Mackinnon* (1869) L. R. 4 C. P. 711. The contract is said to be *void* for mistake, there being no negligence. Nevertheless, the acceptance and retention of benefits received under this "void contract" should estop the plaintiff from enforcing the previous contract, just as it would in the case of a contract voidable for fraud. It would here be an accord and satisfaction but for the fact that the defendant's performance under the "void contract" was nothing but a part performance of the defendant's duty under the previous oral agreement. *Foakes v. Beer* (1884) 9 App. Cas. 605. Even had the written document been merely *voidable* for fraud, the plaintiff's power of avoidance should not be destroyed by the retention of a payment less than that to which he has a right under the operative facts of the previous oral agreement.

CRIMINAL LAW—VOID SENTENCE—IMPOSING FINE AND IMPRISONMENT WHEN STATUTORY PENALTY IS IN THE ALTERNATIVE.—The state law authorized a court to punish for a certain crime either by fine or imprisonment. The court sentenced a convicted person to imprisonment and to pay a fine of one dollar. The prisoner paid the fine and then sought release by *habeas corpus. Held,* that as the statute did not authorize both fine and imprisonment, the sentence to imprisonment became void when the fine was paid. Carter, J., *dissenting. People ex rel. Maglori v. Siman* (1918, Ill.) 119 N. E. 940.

The majority admit that if the relator had not paid the fine the court could not have held either part of the sentence void as beyond the jurisdiction of the trial court. It is difficult to see how a sentence not void when entered can be made so *ex post facto* by acts of the prisoner. The view of Mr. Justice Carter, that the sentence was not beyond the power of the court but merely erroneous, seems preferable. The error should therefore have been corrected by writ of error. Prior Illinois cases seem to sustain that view. *People v. Graves* (1917) 276 Ill. 350, 114 N. E. 556; *People v. Whitman* (1917) 277 Ill. 408, 115 N. E. 531. On the other hand, *Ex parte Montgomery* (1885) 79 Ala. 275, supports, but without discussion, the view of the majority.